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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,074	03/22/2004	Gerhard H. Wenzel	032016-0132	1393
26371	7590	04/22/2005	EXAMINER	
FOLEY & LARDNER 777 EAST WISCONSIN AVENUE SUITE 3800 MILWAUKEE, WI 53202-5308			PELHAM, JOSEPH MOORE	
			ART UNIT	PAPER NUMBER
			3742	

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

**Office Action Summary**

Application No.

10/806,074

Applicant(s)

WENZEL, GERHARD H.

Examiner

Joseph M Pelham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
 Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/16/04, 7/28/04</u> . | 6) <input type="checkbox"/> Other: ____  |

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***Claim Rejections - 35 USC § 102***

Claims 1-3, 6-9, 15-18, 21-26, 29, 31, 39, 41, 44, 51, and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. 5223290 (US'290).

Referring to Figs. 1-4, 6a, & 6b; and col. 2, line 23, through col. 4, line 10 ("2:23 - 4:10"), 4:64 - 5:6, and 5:28 - 6:3, US'290 discloses the invention exactly as claimed, including an indexing belt conveyor, "very rapid" heater response, user control of indexing cycle times and/or heater function, where the food item stops in the heating chamber and continues on completion of heating, and both heating and standby modes (5:30-41).

***Claim Rejections - 35 USC § 103***

Claims 4, 5, 10-14, 19, 20, 27, 28, 30, 32-38, 40, 42, 43, 45-50, and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over US'290 in view of U.S. Pat. 6262396 (US'396).

The claims differ from US'290 only in calling for "substantially on-demand" rapid heating ("on the order of seconds"), ribbon heaters above and below the heating chamber and separated from the same by IR transmissive glass members, a plurality of operating programs, indexing by means of motor activation and deactivation, and selection of continuous or indexed movement. The Examiner firstly notes that indexing by means of motor activation and deactivation, and selection of continuous or indexed movement, do not patentably distinguish the claimed invention from the prior art: motor activation and deactivation has long been a conventional manner of indexing, and selection of continuous or indexed movement, both of which US'290 discloses while saying no more about the manner of selecting between them, would, if not inherently disclosed by US'290, be integrated and selectable as a matter of course to allow the same oven to apply either mode; hence such would have been immediately obvious to the artisan.

Referring to Figs. 1-3 and 3:54 - 4:21, US'396 discloses on-demand heating, ribbon heaters 32, 38 above and below the heating chamber and separated from the same by IR transmissive glass members 42, 44, and a plurality of operating programs. It would have been obvious to adapt the heater and control means of US'396 to the oven of US'290 to expedite heater response and hence cooking times, and to obviate the need to reenter cooking programs used regularly.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph M Pelham whose telephone number is 571-272-4786. The examiner can normally be reached on M-F 7:30 AM to 4:00 PM.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

4/14/05

A handwritten signature in black ink, appearing to read 'JPelham', with a long horizontal flourish extending to the right.

JOSEPH PELHAM  
PRIMARY EXAMINER